



THE INTERIM

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FAREWELL

Our friend and colleague Eddy McClure moved on to greater adventures on May 8, 2008. She was born in Houston, Texas, on April 25, 1950. She graduated from Sam Rayburn High School in Pasadena, Texas, in 1968. The name of her high school may have sparked her interest in the political process. Eddy attended Stephen F. Austin State University in Nacogdoches, Texas, earning degrees in political science and physical education. She was a multifaceted athlete for the Ladyjacks, participating in basketball, softball, and track, and was coached in basketball by the legendary Sue Gunter. Eddy was named the outstanding physical-education freshman, and she received an academic scholarship in her junior year.

In 1973, Eddy accepted a job as the first women's basketball coach and volleyball coach at Creighton University in Omaha, Neb., where she was also a physical-education instructor. Creighton University has established the Offenburger-Higgins-McClure Scholarship in honor of the founders of the women's athletic program at the university.

Eddy remained at Creighton until 1976, when she moved to Missoula to become an instructor and the coach of the Lady Griz. In 1978, Eddy left the coaching profession to pursue her education, earning a master's degree in kinesiology from the University of Wisconsin and a bachelor's with honors in radio-television, with a music minor, from the University of Montana. The degree of knowledge she attained through her music minor was questionable because she remained a devoted John Denver fan.

In 1983, Eddy enrolled at the Northwestern School of Law at Lewis & Clark College in Portland, Ore., and in 1986 she received her J.D. after attending the University of Montana School of Law for her final year of school under an exchange program. Eddy became a staff attorney for the Montana Legislative Services Division, where she remained until her death.

During her employment, Eddy focused her talents on education law and state-tribal relations. She was a co-founder of the Indian Law Section of the Montana State Bar. Eddy's colleagues, as well as legislators and lobbyists, were enlightened by her knowledge and entertained by her wit and humor.

Eddy loved Montana and committed herself to helping the people of the state through her work at the Legislature and in her private life. She was an avid hiker and golfer, a fair guitar player, and a proud, longtime member of Red Sox Nation. Her border collie son, Kirby, persuaded her to accompany him in his work as a therapy dog, in his agility competitions, and in his attempts to herd sheep, where her work with the Legislature was a great asset.

Remember Eddy by hiking in the high country with your best two-legged or four-legged friend. Memorials are suggested to Offenburger-Higgins-McClure Scholarship, Creighton University, Attn: Carol Ketcham, Athletic Development Officer, 2500 California Plaza, Omaha, NE 68178, or Prickly Pear Land Trust, P.O. Box 892, Helena, MT 59601.

THE INTERIM

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THE INTERIM is a monthly newsletter that reports on the interim activities of legislative committees, including the Legislative Council, the Environmental Quality Council, the Legislative Finance Committee, the Legislative Audit Committee, and interim legislative committees and subcommittees staffed by the Legislative Services Division. Information about the committees, including meeting schedules, agendas, and reports, is found at <http://www.leg.mt.gov>. Follow the "Committees" link or the "Interims" link to the relevant committee. The newsletter is posted on the legislative branch website on the first of each month (follow the "Publications" link).

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LEGISLATIVE COUNCIL

Budget items scheduled for June meeting...The Legislative Council is meeting Tuesday, June 24 at 10 a.m. in Room 102 of the state Capitol to discuss budget proposals and other information in preparation for the 2009 session. The council will review budgets for Information Technology, TVMT, and interim committees. Other agenda items include a review of proposed legislation from the Governor's Office of Budget and Program Planning and a discussion on strategic planning items, including legislator reimbursement and even-year and annual sessions.

The council chair and vice chair are arranging a meeting with chairs and vice chairs of the Legislative Finance Committee and the Legislative Audit Committee to review administrative and management responsibilities. The meeting has been tentatively scheduled for Friday, June 6 at noon.

For legislators going to July NCSL meeting...To help establish contact information, legislators who are attending the July meeting of the National Conference of State Legislatures in New Orleans should contact Susan Fox as soon as possible.

For more information about the Legislative Council, visit the council's webpage or contact Susan Byorth Fox at sfox@mt.gov or (406) 444-3066.

LEGISLATIVE BRANCH WEBSITE

New feature on the website...Ever wonder where the first state Legislature met? Who the first women in the Legislature were? When the Legislative Council was created?

You can find out on a new webpage that focuses on "Historical Highlights from Legislative History." It's available on the legislative branch website at <http://leg.mt.gov/css/about/history.asp>. Or go to "About the Legislature" and click on "History."

CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES COMMITTEE

Health care highlights June meeting...The Children, Families, Health, and Human Services Interim Committee will meet June 10-11 in Room 137 of the state Capitol. The committee will focus on a number of health-related policy proposals as it winds down its work on two studies--the SJR 5 study of emergency medical care and the SJR 15 study of access and delivery of health care services.

Decisions made at this meeting could result in bill drafts that would be reviewed and acted on at the committee's final meeting in August.

The meeting will begin at 10 a.m. on June 10 and

continue through June 11. The SJR 15 subcommittee will meet from 8 a.m. to 9:45 a.m. on June 11, and the full committee will meet the remainder of the day.

SJR 15 study of physician credentialing and referrals continues...The subcommittee formed to examine two aspects of the SJR 15 study of the health care delivery system--specialty hospitals and physician credentialing--will meet for two hours on June 11 to review a bill draft (LC 38) that would clarify when a hospital may deny privileges to doctors who have an interest in a competing health care facility. The draft also would require health care providers to disclose conflicts of interest to their patients and to provide options to patients when making referrals.

The committee reviewed and discussed the draft in March. It has been revised to reflect public comment received at that time. In June, the full committee will:

- hear from insurers, the Board of Medical Examiners, and a physician about how insurance companies use credentialing to determine which doctors to include in their preferred provider networks;
- continue discussions of ways to improve consumer access to information about hospital and physician charges; and
- consider whether hospitals should be required to provide a certain level of so-called community benefits, including charity care, in return for their tax-exempt status as nonprofit organizations.

Final EMS audit presentation expected...The Legislative Audit Division is scheduled to present the final results of its performance audit of Montana's emergency medical services system on June 11. Although the audit was not part of the SJR 5 study approved by the Legislature, the committee expects the audit findings to play an important role in its decisions for the study.

Partial audit findings, presented in January, showed that Montana has about 4,600 licensed emergency medical technicians. However, only about 57 percent are actually practicing. About 95 percent of the state's urban residents live within 30 miles of an Advanced Life Support unit that operates around the clock. But just 55 percent of rural residents have a similar unit within 30 miles of their home; only 27 percent have a unit within 10 miles.

Based on the early audit information and comments from EMS providers, the committee is looking at ways to ensure EMS providers can recruit and keep volunteer EMTs and continue providing services. Options range from tax incentives to a grant program for providers, as well as changes to state laws and regulations that could ease the problems facing rural areas. The committee will review initial bill drafts and briefing papers on a range of ideas and decide on which ones to pursue.

Mental health study continues...DMA Health Strategies of Massachusetts will present an update on the study of Montana's publicly funded mental health system. DMA was hired to determine whether existing mental health services meet the state's needs. The firm will also analyze how money is spent on the mental health system and identify other possible sources of funding.

DMA has been interviewing state agency staff and key stakeholders, collecting and analyzing data on the mental health services provided in past years, and conducting a web-based survey to gather more comment from Montanans. It must report its findings to the committee by Oct. 31.

Stay tuned...The meeting agenda and related documents are available on the committee website at www.leg.mt.gov/cfhhs. For more information contact Sue O'Connell, committee staff, at (406) 444-3597 or soconnell@mt.gov.

ENVIRONMENTAL QUALITY COUNCIL

The Environmental Quality Council is wrapping up its study of conservation easements and developing potential climate change recommendations.

Conservation Easement Study...The EQC met May 12-13 and approved a draft report for HJ57--a study that directs the EQC to examine options for establishing conservation easements on trust lands.

The conservation easement study will go out for public comment in June. In general, the study found that the Montana Land Board has several legal options when it comes to state trust land and conservation methods. The draft report does not recommend any legislation, but it does include a proposed brochure that explains the basic elements of conservation easements.

In July, the EQC will review the public comment and may make changes to the draft report. The final report will be presented in September.

Climate Change Study...In conjunction with its climate change study, the EQC directed staff to prepare discussion bill drafts, write letters, and schedule reports for the next meeting. The discussion bill drafts will be available before the July meeting.

The general topics (e.g., Enhanced Solid Waste Recovery) are taken from the Montana Climate Change Action Plan released in November 2007. The council discussed what's being done now in those areas and a range of possible legislative actions.

During the July meeting, the council will discuss the bill drafts and information requested below. The bill drafts that are revised and approved will be available for a formal public comment period in August. The council will make a final decision on the proposed legislation at its September meeting.

AFW-12 Enhanced Solid Waste Recovery

- Bill draft that would increase coal severance tax funding for Montana Manufacturing Extension Center for promoting and developing recycling.
- Bill draft that would create a loan program to assist political subdivisions of the state, including local and tribal governments, in developing recycling technologies and equipment at local landfills.
- Bill draft that would remove sunsets on tax credits for recycling that are due to expire in 2009 and 2011 (credit against air permitting fees for certain uses of postconsumer glass and recycled materials tax credit, respectively). The draft would include eliminating the sunset on the tax credit for investments in property or equipment used to collect or process reclaimable materials.
- Bill draft that would assist in creating more markets for recycled materials through research and education.

AFW-11 Promote Local Food and Fiber

- Bill draft that would remove the sunset for using interest from the coal severance tax permanent fund for the Growth through Agriculture program and Montana Cooperative Development Centers.
- Bill draft that would provide tax credits or other tax incentives for using Montana raw materials for production of food in Montana.
- Report on potential legislation being prepared by the Economic Affairs Interim Committee related to the SJR 13 study of adding value to Montana agricultural products through redevelopment of a food processing industry.
- Send a letter to the commissioner of higher education encouraging Montana universities to track, as economically as is feasible, the amount of locally grown food produced and consumed in Montana.

TLU-10 Transportation System Management

- Bill draft that would require the Department of Transportation to provide a report to the Revenue and Transportation Interim Committee each interim on measures that the department is taking to conserve energy in the transportation sector and on conservation measures specific to city street design.
- Bill draft that would update and remove any restrictive statutes related to mass transit.

RCII-11 Low Income and Rental Housing Energy Efficiency Program

- Bill draft that would provide additional funding for weatherization programs. Funding would come from a percentage of the increased oil and gas revenue collections in Montana.
- Bill draft that would expand tax credits (similar to those proposed in SB 210 in 2007) to create incentives for low-income property owners and landlords or renters to weatherize.

AFW-7 Expanded use of Biomass Feedstocks for Energy Use

- Send a letter to the commissioner of higher education asking Montana's universities to provide a report and recommendations on biomass, specifically the feasibility of the collection, processing, transportation, storage, and distribution of forestry and agricultural residues, as well as market development or expansion for these materials.
- Bill draft that would direct the EQC to study biomass and provide specific direction on policy matters including, but not limited to, expanding the Alternative Energy Revolving Loan program, better utilizing the Renewable Resource Grant program, promoting pilot projects, source reduction, emissions research and characterization, and a variety of tax incentives.
- Joint resolution that would endorse the National Association of Counties' support of Congress enacting legislation granting a governor authority to declare a crisis when the severity of fire danger from fuels on identified federal lands within that state poses a significant threat to public health and safety. Upon a declaration, responsible federal agencies would fast-track a mitigation plan to reduce forest fuels. The plan would be excluded from the NEPA appeal process, and any claimant filing a court action against the plan would be required to post a damage bond.

CC-7.1 Target for Reducing the State's Own GHG Emissions

- Bill draft that would require all new state buildings to exceed current building codes or standards, potentially through an expansion of the State Building Energy Efficiency program.

Open Cut Mining...Department of Environmental Quality staff briefed the EQC on a pending situation with the opencut mining program. Three recent District Court decisions ordered the agency to issue permits for gravel operations in cases where the application process took

longer than the statutory time frame. The permits were issued without the required environmental analysis. The agency considers the statutory time frames and the requirement for environmental analysis to be conflicting laws. Agency officials say that a lack of staff and the amount of analysis needed for large-scale gravel operations make it difficult to complete the environmental review in the mandated time frame.

Shortly after issuing the permits, the DEQ was sued by Gallatin County landowners next to some of the pits for failing to conduct the required environmental review or allow public comment.

Legislation to increase opencut permit fees to pay for additional staff has failed in the last two sessions.

As of this printing, the agency has not decided whether to appeal the District Court decisions.

Petroleum tank release fund subcommittee meets again June 4...A joint subcommittee of the Environmental Quality Council and the Legislative Finance Committee is looking at proposals for improving the solvency of the Petroleum Tank Release Fund. The fund was established in 1989 to provide money for the timely cleanup of tank releases at facilities such as gas stations. The revenue for the fund includes a 0.75 cent cleanup fee on each gallon of petroleum fuel distributed. In fiscal year 2007, the fund had a shortfall of \$2.3 million.

Corrective proposals from the fund's citizen oversight board include, among others, a 0.25 cent increase in the cleanup fee and an increase in the deductibles that tank owners and operators are required to pay if they have a leak.

The subcommittee will consider these proposals at its June 4 meeting, beginning at 1 p.m. in Room 422 of the state Capitol, as well as hear more about the availability of private insurance and the prioritization system and cleanup standards used by the Department of Environmental Quality for leaking tanks.

For more information, contact Hope Stockwell, subcommittee staff, at (406) 444-1640 or hstockwell@mt.gov, or visit the subcommittee's webpage at www.leg.mt.gov/eqc--scroll down to "Subcommittees" for the link.

Next EQC meeting in July...The EQC meets July 14-15. For more information, contact Todd Everts at teverts@mt.gov or (406) 444-3747; Joe Kolman at jkolman@mt.gov or (406) 444-9280; or Sonja Nowakowski at snowakowski@mt.gov or (406) 444-3078. The EQC website is www.leg.mt.gov/eqc.

WATER POLICY COMMITTEE

Cool water, big iron...There have been days when Lezlie Kinne has packed heat patrolling her beat as a water commissioner in southwest Montana. She tries to give

people the opportunity to do the right thing and, for the most part, cool heads prevail.

But enforcing water rights isn't easy.

"I've been cussed," Kinne told the Water Policy Interim Committee in April.

The WPIC heard various aspects of water rights enforcement from the Water Court, the Department of Natural Resources and Conservation, the attorney general, the Gallatin County attorney, and Kinne. Each entity plays a role in enforcing water rights.

For much of the interim, the committee has researched and discussed ways to beef up enforcement, but has yet to settle on a recommendation.

The WPIC also heard a review of the state water plan and proposals from the DNRC to revamp its permitting system and make changes to the permitting process for groundwater in closed basins.

June meeting planned...The next meeting is scheduled for June 10-11 at the state Capitol. On tap for that gathering will be discussions about irrigation techniques, water quality, and exempt wells. The panel will continue debating possible recommendations and legislation.

An agenda, more meeting information, and background materials will be available at: www.leg.mt.gov/eqc.

For more information, contact Joe Kolman, committee staff, (406) 444-9280 or jkolman@mt.gov.

STATE-TRIBAL RELATIONS COMMITTEE

June meeting on the Flathead Reservation....The State-Tribal Relations Committee is meeting June 23-24 on the Flathead Reservation. The committee will tour various economic development programs and educational facilities on the reservation. The committee will meet at noon, June 23 in the Confederated Salish and Kootenai Tribal Council offices in Pablo to hear:

- presentations by project directors on the seven Tribal College Tribal History projects, funded by the Montana Legislature;
- a discussion of alcohol taxation agreements between tribes and the state; and
- a panel discussion on family violence on reservations, including prevention and rehabilitation efforts and programs for victim support. Representatives of Montana tribes will be on the panel.

Also on the agenda are updates from the Indian liaison to the Department of Corrections; the Board of Pardons and Parole regarding pre-release centers and recidivism as they relate to reservations; law enforcement representatives regarding implementation of racial profiling laws; and the State Reserved Water Rights Compact Commission regarding water compacts and related water

projects. The committee will also review the flow of federal and state money to reservations for mental health and substance abuse programs and discuss possible legislation for the 2009 session.

Economic development and related tours....On June 24 the committee will tour several sites on the Flathead Reservation, traveling to Elmo to visit a health care facility, the Kerr Dam, and the CSKT Housing Authority and Salish Kootenai College in Polson. The committee will be introduced to the CSKT Tribal Council at about 1:30 p.m. The final tour is of S&K Electronics.

For more information....The public is invited to attend the State-Tribal Relations Committee meeting. For an agenda and additional information, visit the committee website or contact Pat Murdo, committee staff, at (406) 444-3594 or pmurdo@mt.gov.

EDUCATION AND LOCAL GOVERNMENT COMMITTEE

The subcommittees of the Education and Local Government Interim Committee are meeting Thursday, June 12, and the full committee is meeting June 13.

K-12 subcommittee...The K-12 subcommittee is meeting Thursday, June 12. The subcommittee will hear an update on the Montana Quality Education Coalition lawsuit and a progress report from the Department of Administration on the statewide school facilities inventory, which is now nearing completion. The subcommittee will also discuss Oregon's educators benefit program.

PEPB Subcommittee...The Post-secondary Education Policy and Budget Subcommittee is meeting June 12 to discuss the following:

- "Shared policy goals" document;
- Bitterroot Valley Community College (and consider a possible joint resolution);
- faculty and staff retention;
- Board of Regents budget package; and
- HJR 22 study of access to dental care in Montana.

Joint meeting of K-12 and PEPB subcommittees...The K-12 and PEPB subcommittees occasionally meet jointly to discuss common interests. The subcommittees will discuss a presentation on shared policy goals and will hear from the Kindergarten--College working group.

Education and Local Government Committee...The full committee is meeting Friday, June 13. Following subcommittee reports, the committee will consider the following items:

- update on the Montana Quality Education Coalition lawsuit;
- overview of the 2005 Quality Schools Interim Committee findings;
- Oregon's educator's benefit program;
- HJR 22 report;
- Bitterroot Valley Community College report
- Montana 529 Investment Plan report; and
- student assistance and scholarship reports

Contact information...For more information about the committee or the K-12 subcommittee contact Casey Barrs, committee staff, at (406) 444-3957 or cbarrs@mt.gov. For more information about the PEPB subcommittee contact Alan Peura, Legislative Fiscal Division, at (406) 444-5387 or apeura@mt.gov.

LEGISLATIVE FINANCE COMMITTEE

LRP conference call...The Long-Range Planning working group held a conference call on April 28 to review the status of the Department of Fish, Wildlife, and Parks capital project appropriations. Sen. Trudi Schmidt, Rep. Dave Kasten, and Rep. Jon Sesso participated in the conference call, along with FWP Director Jeff Hagener and staff from FWP, the Legislative Fiscal Division, and the Office of Budget and Program Planning.

There are large unexpended appropriation balances in FWP capital projects. The working group discussed the reasons for the large balances and the classification of certain FWP projects as capital projects. Staff analysis showed that many of the balances could be reverted. FWP staff said that certain balances were related to ongoing projects, and that two projects do not qualify as capital projects. A question was raised on whether several FWP grants programs could be considered "capital projects," since the grants fund projects on property not owned by the state.

The working group made the following recommendations :

- revert project appropriations that have been completed or will not go forward;
- move the Fishing Access Site maintenance project to the general appropriations act; and

- move the bird release component of Upland Game Bird program to the general appropriations act.

- The working group also directed legislative staff to: investigate the feasibility of sunseting capital projects;

- investigate alternative methods of handling FWP grants programs; and

- investigate better methods for showing appropriation amounts on budget status reports.

Meeting reports and minutes are on the LFD website by following the "Long-Range Planning Working Group" link. The working group will meet in November to review the recommended actions and decisions. For more information, contact Cathy Duncan at cduncan@mt.gov or (406) 444-4580.

June LFC meeting...The Legislative Finance Committee meets on Thursday, June 5 at 8 a.m. and Friday, June 6 at 8 a.m. in Room 102 of the state Capitol. The committee will recess at 8:30 a.m. on June 5 to allow the performance measurement work groups to meet. The full committee meeting will resume at 1 p.m. The agenda and reports for this meeting are on the Legislative Fiscal Division website at www.leg.mt.gov/lfc. For more information contact Clayton Schenck at cschenck@mt.gov or any LFD staff at (406) 444-2986. The meeting agenda includes:

- Status of school funding lawsuit
- Information technology update
- Acquiring office space for state agencies—statutory options
- Rainy day fund—proposal and options for a committee bill
- Spending of non-general fund money first—statute issues
- Electronic records information management
- Student loan availability in Montana and the impact of bond market problems—an update on MHESAC and SAF

The agenda also includes updates from subcommittees and work groups:

- Performance measurement—work group reports on selected programs
- Study of budget and appropriations process
- Subcommittee on long-term stability of the general fund
- State Fund and Workers' Compensation subcommittee
- Study of LFD products and services

LFD staff has prepared reports for which no presentation is planned. These reports are on the LFD website:

- Update on Montana Historical Society Museum Site Selection
- Corrections Population Projections
- Long-range Planning Study

Joint LFC and RTIC subcommittee meeting...Members of the Legislative Finance Committee and Revenue and Transportation Interim Committee will conduct a conference call on June 4 at 4:45 p.m. to discuss whether to recommend to the full committees joint sponsorship of a study bill to examine the effects of changing demographics in Montana on governmental revenue and expenditures. LFC members are Sen. Carol Williams, Sen. Keith Bales, Rep. Rick Ripley, and Rep. Jon Sesso. RTIC members are Sen. Jim Peterson, Sen. Kim Gillan, Rep. Mike Jopek, and Rep. Bob Lake.

For more information about this meeting, contact Clayton Schenk at (406) 444-2986 or cschenck@mt.gov, or Jeff Martin at (406) 444-3595 or jmartin@mt.gov.

ECONOMIC AFFAIRS COMMITTEE

Money pitches from high-tech and low-tech groups...The arguments for priming the pump with economic development dollars came from both high-tech researchers at the University of Montana and low-tech food processors during the Economic Affairs Interim Committee's May 7-8 meeting in Missoula, with a side trip to Ronan. University officials paired cutting edge research demonstrations in pharmacology, neuroscientific applications, and human physiology with tours of laboratories, building construction, energy projects, and the Montana Technology Enterprise Center.

Interactions with faculty and students showed the relationship between education in the classroom and research in the laboratories. Research faculty said providing opportunities for both undergraduates and graduate students to work in these types of labs allows them to discover career opportunities beyond learning concepts from textbooks. The funding of this research comes from federal sources (e.g., National Science Foundation, National Institutes of Health and the Department of Defense), and the faculty pointed out that these grants involve a highly competitive process to secure them.

Brad Eldredge, an economist with the Commissioner's Office of Higher Education, described how Montana's university system compares to universities in other western states. He also said recent Census Bureau data shows that more college graduates in Montana are beginning their careers in the state.

The committee has planned a similar discussion at Montana State University in mid-July.

SJR 13 study of value-added agriculture...As part of the SJR 13 study of value-added agriculture, the committee traveled to Ronan to tour the Mission Mountain Food Enterprise Center, which provides a commercial kitchen and

food processing center and marketing and business development assistance to entrepreneurs throughout Montana. The committee sampled food produced at the center and heard concerns about the survivability of the center.

Brian Gion, chief executive officer of the Montana Cooperative Development Center, reviewed Montana cooperative law and the 16 cooperatives in Montana that have value-added agricultural production. He said that MCDC leverages \$455,000 of state dollars into over \$3.6 million by providing assistance with feasibility studies, financing, and marketing, among other activities. Professor Neva Hassenein and graduate student Jessica Babcock provided updates on interviews with stakeholders in other states at food innovation centers, many of which have either a university link or a state-based connection.

Committee reviews health insurance proposal...The committee's study of ways to expand health insurance coverage for the uninsured included a review of a discussion bill draft that would limit mandated health insurance coverage. The initial draft would establish an individual insurance policy to provide hospitalization services but contain only mandates required by federal law. The insurance policy would not require:

- coverage by a range of health care practitioners;
- mammograms;
- inborn errors of metabolism;
- well-child care;
- newborns, in certain cases;
- coverage of a developmentally disabled child past the age listed in the insurance policy; and
- parity between coverage for physical and severe mental illness, such as schizophrenia, unless current federal legislation wins congressional and presidential approval.

Speakers contrasted the lack of any health insurance coverage with the costs attributable to mandates that increase insurance policy premiums. Frank Cote, of Blue Cross Blue Shield Montana, estimated that mandated benefits add about \$25 per policy per Montanan per month. This estimate is based on earlier calculations for benefits mandated for both group and individual policies, which include more mandates than the limited individual policies. Cote said mandated benefits are equivalent to an unfunded mandate. He suggested that the government provide tax credits to offset the amounts mandated in policies. Aaron Czyzewski of the American Cancer Society said that mandates that encourage screening for conditions like cancer can decrease the cost of an illness. People who don't

have screening coverage tend not to get the screenings, he said, even if prevention is low-cost compared with treatment of a full-blown disease. He also noted that mandates are not included in the high-cost drivers behind health insurance premiums.

Other speakers discussed the purpose of mandates. Jan Van Riper of the State Auditor's Office asked the committee to consider who benefits from mandates but said that the individual policy does not involve spreading risk among group members. Instead, the individual policy applicant can be rejected on health risks. Riley Johnson, a representative of the National Federation of Independent Businesses, said that fewer independent businesses (47 percent) bought health insurance in 2007 than in 2004 (54 percent). Applying those numbers to Montana independent businesses, he projected a potential customer base of 1,300 businesses that might be interested in an individual policy. Johnson also noted that businesses are concerned that some employees without health insurance are trying to use workers compensation insurance as a substitute.

During public comment, two people said that not having mandated insurance for the mentally ill is discriminatory and society pays the costs if the individual is not able to afford treatment. An advocate for the disabled suggested reducing the administrative costs of health care, instead of mandates, would provide savings offsets for health insurance premiums.

Heading to Bozeman...The next meeting of the committee will be July 17-18 in Bozeman at a location to be determined. For more information, contact committee staff Andrew Geiger at (406) 444-5367 or angeiger@mt.gov.

STATE ADMINISTRATION AND VETERANS' AFFAIRS COMMITTEE

Committee authorizes retirement bill drafts, rejects others...At its April 28 meeting, the State Administration and Veterans' Affairs Interim Committee considered proposals offered by stakeholders to revise the state's public employee retirement systems. The list below provides a short title for each of the proposals; the committee's action is shown in parentheses.

- Competitive compensation and adequate funding of the Montana university system optional retirement program, MEA-MFT (LC 107);
- Attracting and retaining a quality K-12 educational workforce "Professional Retirement Option", MEA-MFT (LC 108);
- Allow members who initially chose not to enroll in the guaranteed annual benefit adjustment a second, one-time option to enroll in GABA, Montana State Firemen's Association (LC 109);
- Add a partial lump sum option payment to the

Firefighters' Retirement System, Montana State Firemen's Association (did not authorize bill draft);

- Allow for the expansion of employers and firefighters who can join the Firefighters' Retirement System, Montana State Firemen's Association (LC 110);
- Make all retirement systems equal when defining compensation for purposes of retirement, Montana State Firemen's Association (LC 111);
- Raise the multiplier for years of service from the current 2.5 percent to 3 percent, Montana State Firemen's Association (LC 112);
- Return the GABA to 3 percent for new hires, Association of Montana Retired Public Employees (did not authorize bill draft);
- Allow union dues to be withheld from monthly retirement benefits of highway patrol retirees, Association of Montana Troopers (did not authorize bill draft);
- Change the definition of "compensation" in 19-9-104, MCA, to be the same as in other retirement systems, Montana Police Protective Association (did not authorize bill draft);
- Eliminate the 9 percent employee contribution to Montana Police Officers Retirement plan for retired members participating in the deferred option retirement plan, Montana Police Protective Association (did not authorize bill draft); and
- Include public safety dispatchers in one of the 20-year retirement systems for public safety employees, Association of Public-Safety Communication Officials-International (LC 113).

The Public Employees' Retirement Board and the Teachers' Retirement Board will offer their respective proposed changes to the retirement systems at the committee's June 30 meeting.

HJR 46 election study results in bill drafts...On Feb. 22, the committee approved two election-related bill drafts (LC 35 and LC 36) that resulted from the HJR 46 study of election laws. In April, the committee reviewed both drafts and, after making a minor change to LC 35, approved the drafts. Sponsors of the bills have not been chosen yet.

The committee also worked on the mail ballot pilot project--LC 60--that members first authorized in November. The project would allow 18 volunteer counties to conduct all elections--including elections for congressional, statewide, and legislative offices--by mail. The committee decided the pilot project should include elections held in 2009 and 2010. Participating counties would be required to hold any election conducted by the county election administrator as a mail

ballot election. Participating counties would be required to collect specific information to allow future legislatures to determine the effects that the mail ballot elections had on voter turnout, registration, and access and whether mail delivery affected the voting process. The committee will complete its work on LC 60 and the HJR 46 study of election laws at the June 30-July 1 meeting.

Committee to review agency legislative proposals at next meeting...The committee is scheduled to meet Monday and Tuesday, June 30 and July 1 in Room 102 of the state Capitol. The primary agenda items for that meeting will be legislative proposals from the Public Employees' and Teachers' Retirement Boards, the Board of Investments, the Secretary of State, the Commissioner of Political Practices, and the Departments of Administration and Military Affairs. Other topics will fill out the remainder of the agenda. The tentative agenda for the meeting will be posted on the committee's webpage when approved by the presiding officer; it will be updated as necessary.

Please direct questions to, Dave Bohyer, committee staff, at dbohyer@mt.gov or (406) 444-3064, or to Rep. Franke Wilmer, committee chair, at (406) 599-3639.

REVENUE AND TRANSPORTATION COMMITTEE

Committee and subcommittees to meet in July...The Revenue and Transportation Interim Committee is meeting July 10-11. The SJR 31 subcommittee studying taxation and school funding and the HB 488 property reappraisal subcommittee are meeting July 10 before the full committee meeting.

SJR 31 subcommittee...The agendas for the meetings have not been set. However, the SJR 31 subcommittee is tentatively scheduled to review the effects of equalizing school levies statewide and the effects of increasing direct state aid to schools.

HB 488 subcommittee...The HB 488 subcommittee will review a proposal to limit annual increases in taxable value for residential and commercial property and for agricultural land and a proposal to provide a property tax income tax credit based on income. The Department of Revenue will report on its housing market trend meetings held across the state.

Full committee...As part of the HJR 61 study of the linkage of state and federal income taxes, the full committee will review bill drafts to provide a conformity date with federal income tax law. Staff will present an update on reorganizing certain provisions of the individual and corporation income tax laws for enhancing transparency in the compliance with and the administration of the state's income tax laws.

Other agenda items will include reports from the Departments of Revenue and Transportation, committee consideration of requesting a bill draft to clarify the exemption of the first \$250,000 gross value of product under the metal mines tax and a bill draft to clarify tax increment finance district laws. The last two items were deferred from the April 18 meeting.

Joint RTIC and LFC subcommittee meeting...A joint subcommittee consisting of members of the Revenue and Transportation Committee and the Legislative Finance Committee will conduct a conference call on June 4 at 4:45 p.m. to discuss whether to recommend to the full committees joint sponsorship of a study bill to examine the effects of changing demographics in Montana on governmental revenue and expenditures. RTIC members are Sen. Jim Peterson, Sen. Kim Gillan, Rep. Mike Jopek, and Rep. Bob Lake. LFC members Sen. Carol Williams, Sen. Keith Bales, Rep. Rick Ripley, and Rep. Jon Sesso.

For more information about this meeting, contact Jeff Martin at (406) 444-3595 or jmartin@mt.gov, or Clayton Schenck at (406) 444-2986 or cschenck@mt.gov.

THE BACK PAGE

WATER MARKETING IN MONTANA

By Joe Kolman, Research Analyst
Legislative Environmental Policy Office

WHISKEY AND WATER RIGHTS

Mark Twain supposedly knew that a sip of whisky could quench your thirst but a grab for water would lead to fisticuffs.¹ But Twain, sage as he was, probably never imagined the extent to which water would have the ability to line pockets.

Across the West, communities bulging with residents are trying to figure out ways to satisfy the water needs and desires of homeowners and businesses. Those uses of water compete with agricultural and other uses. Some cities are looking to buy water from farmers or Indian tribes. Others are spending millions of dollars to reuse effluent.

In Montana and other states, private people do not own water. Article IX, section 3, of the Montana Constitution provides that: "All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law."

But the right to use that water for beneficial use is held by individuals, corporations, and other entities; water rights can be sold or leased. Growing populations and drought make water rights an increasingly valuable commodity.

The Water Policy Interim Committee, established by the 2007 Legislature, is studying water marketing as part of its work.

Property rights are often described as a bundle of sticks associated with a parcel of land. However, each stick has value independent of the bundle. While there are differences in how different rights may be marketed, a water right is one of those sticks. Water marketing may include the buying, selling, transferring, or leasing of water rights.

Water marketing is not a new debate topic in Montana. In 1984, the Legislature's Select Committee on Water Marketing published a voluminous report and several suggestions for future legislation.²

These recommendations concern a strategy for a water policy for Montana in an interstate setting," wrote Sen. Jean Turnage, who chaired the panel. "This agenda is too

important and too complex to be addressed by one interim committee or one legislative session. These issues significantly affect the future of Montana. The deliberations around them must be ongoing."

Although those words were written nearly a quarter century ago, water markets are still in their infancy, according to Water Strategist, a newsletter that analyzes water policy, marketing, finance, legislation and litigation in 17 western states.

"Water assets are not traded westwide; no indicator can measure overall activity in water markets," the newsletter said in its April 2006 issue. "The economic value of water depends upon the reliability of the underlying water right, quantity, quality, uses and the location and availability of competing sources of supply."

However, in Montana and other states, competing demands for water are driving water marketing discussions. The 2007 Legislature passed House Bill 831 regulating groundwater appropriations in closed basins, which encompasses much of western Montana. Mitigation plans required under that statute may contain some aspect of water marketing. The strategic plan for the Water Resources Division of the Department of Natural Resources and Conservation includes the tasks of determining where water is physically and legally available for development and creating a report of what rights that might be available for sale or change.³

WATER MARKETING IN MONTANA

At the suggestion of the water marketing committee, the 1985 Legislature established a water leasing program administered by the DNRC. The statute allows the department to acquire water through appropriation in its own name, by agreement or purchase with another water right holder or by contract for water in certain reservoirs. The water may be leased for beneficial uses.⁴

The statute was amended in 2007. Previously, the program was limited to leasing 50,000 acre-feet. Now, DNRC may lease up to 1 million acre-feet of water under contract with the federal government from Fort Peck, Tiber, Canyon Ferry, Hungry Horse, Koocanusa, or Yellowtail reservoirs or from other reservoirs. Of that 1 million acre feet, up to 50,000 acre feet may be leased for beneficial uses outside Montana.⁵

³ DNRC Water Resources Division Strategic Plan 2005-2010. http://dnrc.mt.gov/wrd/pdfs/wrd_strategicplan05.pdf

⁴ 85-2-141, MCA

⁵ Senate Bill 376. <http://data.opi.mt.gov/bills/2007/billhtml/SB0376.htm>

¹ "Whiskey is for drinking; water is for fighting over." Many sources attribute this quote to Mark Twain, but some note that it was never verified.

² <http://leg.mt.gov/content/publications/lepo/1984watermarketing.pdf>

Since its inception, no water has been leased under this statute.⁶

However, the 2005 Legislature passed a resolution urging the DNRC to enter into negotiations with the federal Bureau of Reclamation to determine the availability and cost of water stored behind Hungry Horse Dam in hopes that the state might contract for water and then lease it for water development in the Clark Fork River basin.⁷

In 2007, the Legislature appropriated \$260,000 to pay for a Hungry Horse leasing study. The DNRC, the Bureau of Reclamation, and others are working on the study now.

Montana owns several of its own water projects around the state, such as Deadman's Basin Dam in Wheatland County and the Tongue River Dam in Big Horn County. The state, through DNRC's state water projects bureau, owns water rights in these projects and leases them primarily for irrigation. The bureau administers almost 2,000 water marketing contracts for nearly 300,000 acre-feet of water annually through local water user associations. Revenue from the water purchase contracts, leases of lands associated with the projects, and net revenue from hydropower generation supplements funds for state water project rehabilitation costs.⁸

Other water marketing provisions in Montana law are mostly utilized by private parties, although some non-profit corporations and the Department of Fish, Wildlife, and Parks also play roles.

The law allows for temporary changes in appropriation rights with DNRC approval for 10 years, subject to 10 year renewals. In cases where new water conservation or a storage project is involved, the change may be approved for up to 30 years, again subject to 10 year renewals.⁹

Water may be leased for up to 90 days without DNRC approval for road construction or dust abatement projects¹⁰.

In 1989, in response to drought conditions that left some streams dry and killed fish, the Legislature passed a bill to allow FWP to lease consumptive water rights for instream flows for terms up to 10 years. This statute, 85-2-436, MCA,

underwent significant changes in the 2007 session.¹¹ Until July 1, 2019, FWP may change consumptive use appropriation rights that it holds in fee simple to instream flow purposes on up to 12 stream reaches without any time constraints. FWP may enter into leases for instream flow purposes on an unlimited number of stream reaches for terms up to 10 years, with 10 year renewals. However, after June 30, 2019, the agency may not enter into new lease agreements or renew leases that expire after that date. Any change in purpose or place of use must be approved by the department and is subject to other criteria to protect the rights of other appropriators from adverse impacts.¹²

The owner of a consumptive water right may either convert the use of that right or lease the right for instream flow to benefit fishery resources.¹³

The lease of an existing right to FWP pursuant to 85-2-436, MCA, or the temporary change of a right under 85-2-407 or 85-2-408, MCA, does not constitute an abandonment of the right.¹⁴

A water right holder also may lease or sell water saved through conservation. Lining a ditch to reduce seepage or other measures may result in this so-called "salvaged water."¹⁵

Except for the temporary change for road projects and dust abatement, the appropriators in each of these changes must prove by a preponderance of evidence that the change meets several criteria, including:¹⁶

- The proposed change will not adversely affect the use of the existing water rights of other persons, permitted uses, or reserved uses.
- Except for instream flow changes, the proposed means of diversion, construction, and operation of the appropriation works are adequate.
- The proposed use of water is a beneficial use.
- Except for instream flow changes, the applicant has a possessory interest, or the written consent of the

¹¹ Senate Bill 128 (Ch. 448, L. 2007). <http://data.opi.mt.gov/bills/2007/billhtml/SB0128.htm>

¹² The 2019 date, as well as other portions of the law, may be amended by future legislatures.

¹³ 85-2-408, MCA.

¹⁴ 85-2-404, MCA.

¹⁵ 85-2-419, MCA.

¹⁶ 85-2-402, MCA.

⁶ Rich Moy, DNRC.

⁷ <http://data.opi.mt.gov/bills/2005/billhtml/HJ0003.htm>

⁸ State Water Projects Bureau 2006 report.

⁹ 85-2-407, MCA

¹⁰ 85-2-410, MCA

person with the possessory interest, in the property where the water is to be put to beneficial use.

- If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant. The water quality of an appropriator will not be adversely affected.
- The ability of a discharge permit holder to satisfy effluent limitations surface water discharge permit will not be adversely affected.

Much of the leasing in Montana under these statutes has been done by three entities: Fish, Wildlife, and Parks; Trout Unlimited; and the Montana Water Trust.

Since it was granted the authority to lease water, FWP has signed 17 agreements for instream flow. One lease on Tin Cup Creek could not be renewed and is now held by the Montana Water Trust. Three have been terminated. Most of the leases are with private parties, but one is with a water and sewer district and one is with the Forest Service. The quantity of water leased and the cost varies. A complete history is available in Figure 2 of the 2006 leasing report. There were no new leases in 2007.¹⁷

Montana Trout Unlimited holds six leases, all in the Blackfoot River Valley. The amount leased varies as does the cost per acre foot--ranging from 75 cents to more than \$25 an acre foot.¹⁸

The Montana Water Trust, a non-profit organization founded in 2001, works with landowners on instream flow leases. The organization holds 15 leases on about 2,600 acre feet of water per year. In 2007, the Water Trust paid about \$63,000 for water.

In addition to these, the DNRC has recorded 23 change authorizations by individuals who changed a part of their water right to instream flow since 1991.¹⁹

Water rights also may be sold, unless the owner severs the right from the land it passes with the conveyance of the parcel.²⁰ Until action by the 1985 Legislature, DNRC tracked the number of change authorizations for severed water

rights. There are 70 recorded.²¹ In 2007, the Legislature mandated that starting this July, a water right holder who severs the right from the land must notify DNRC.²²

It is important to note that Montana water may be marketed for uses out of state; however there are criteria that must be met, including:²³

- the proposed use must conform to permit requirements including that the water is legally available and that senior water right holders are not adversely affected;
- the proposed out-of-state use of water is not contrary to water conservation; and
- the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

WATER BANKING

Under the umbrella of water marketing is water banking. But water banking is a multi-faceted process as well. In general, a water bank is an institutional process that facilitates the transfer of water to new uses. In one sense, the water bank operates like a broker, bringing together buyers and sellers. However, the institutional nature of a water bank comes with set procedures and some sort of public sanction for its actions.²⁴

Statewide water banking in Montana is not dealt with in statute.²⁵ The leasing laws the state has in place might constitute what is called a lease bank, where a single lessee solicits and temporarily obtains water from one or more lessors for a specific use, often for environmental purposes. In contrast, a water bank involves the exchange of water entitlements through the interaction of multiple sellers and multiple buyers.²⁶

²¹ Terri McLaughlin, DNRC.

²² House Bill 39 (Ch. 366, L. 2007). <http://data.opi.mt.gov/bills/2007/billhtml/HB0039.htm>

²³ 85-2-311, MCA

²⁴ Lawrence J. MacDonnell, "Water Banks: Untangling the Gordian Knot of Western Water."

²⁵ The Fort Belknap-Montana Compact, codified in Title 85, chapter 20, part 10, establishes a water bank for implementation in years of significant short term water shortage. However, the compact must still be ratified by Congress, so no water banking activity has taken place. The provisions provide for grants to purchase water, pricing alternatives and requirements, how banked water is allocated, and a clause providing that the water bank established in the compact is not intended to preclude a more comprehensive water marketing system within the Milk River Basin.

²⁶ Clifford, Peggy; Landry, Clay; Larsen-Hayden, Andrea. "Analysis of Water Banking in Western States," Washington Department of Ecology and WestWater Research. July 2004. <http://www.ecy.wa.gov/biblio/0411011.html>

¹⁷ 2006 FWP Annual Progress Report - Water Leasing Study. www.leg.mt.gov/water

¹⁸ Trout Unlimited. Terms of Instream Flow Transactions in the Blackfoot.

¹⁹ Terri McLaughlin, DNRC.

²⁰ 85-2-403, MCA.

The goal of a water bank is to facilitate the transfer of water from one use to another use by bringing buyers and sellers together. Doing so may meet one or more of the following objectives:²⁷

- Create a reliable water supply during dry years.
- Ensure a future water supply for people, farms, and fish.
- Promote water conservation by encouraging right holders to conserve and deposit rights into the bank.
- Act as a market mechanism.
- Resolve issues of inequity between groundwater and surface-water users.
- Ensure compliance with intrastate agreements of instream flow.

Water banks may be structured in many ways, but they can be broken down into these general categories:²⁸

- Institutional bank: An institutional bank might be called a paper bank. It functions as a way to exchange water rights and other entitlements. Institutional banks are developed for areas where physical water storage is limited or for large geographic areas. These banks also may be used for natural flow rights or a combination of natural flow and storage rights.
- Surface storage bank: In this case, the exchange of water is backed by water stored in reservoirs or other storage facilities.
- Groundwater bank: A groundwater bank exchanges credits or entitlements for water withdrawals from an aquifer. Under conjunctive use programs, excess surface water is injected or infiltrated into the groundwater aquifer to be extracted during times of limited surface water supply. Groundwater banking programs also are being developed to provide mitigation in areas with excessive surface water withdrawals.

The entity that administers the bank will likely affect the cost to establish and administer the bank. The administration of the bank also may play a part in the level of trust and participation by water users.²⁹

Examples of administrative structures include:³⁰

- Public: Most existing water banks are operated by a federal, state, or local governmental agency or by an administrative board specifically developed to provide administrative oversight.
- Private nonprofit: This could be a new organization comprised of representatives from stakeholder groups or a contract with an existing nonprofit.
- Private for profit corporation: There have been limited attempts at this model.
- Public-private partnership: In this model, a private corporation and a public entity jointly invest capital and operate the water bank.

The administrative costs also will be affected by what services a water bank chooses to offer. At a minimum, a water bank might aggregate water supplies from willing sellers and facilitate the sale to buyers. Other services may include:³¹

- registry of water rights or entitlements;
- regulating or setting market prices;
- setting and implementing long-term strategic policies and daily operations;
- establishing whether the bank operates on a year-by-year or continual basis;
- determining which rights can be banked;
- quantifying the bankable water;
- Specifying who can purchase or rent from the bank;
- setting transfer or contract terms;
- dealing with any regulatory agencies;
- resolving disputes.

POLICY QUESTIONS

Water marketing is a vast topic and can spur a wide range of policy discussions. But a few policy questions to consider may include:

- Are current lease and change laws working? Are changes needed?
- What role should the state play in water marketing?

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

- Is an intermediary such as a water bank necessary?
- Should a water bank be a statewide entity, or should it apply to specific basins?
- Should a water bank operate year round, during a growing season, or only during droughts?
- How would a water bank protect the water rights of users who are not part of the water bank from adverse effects?

As part of a wide-ranging water study, the 2004 Environmental Quality Council studied some aspects of water banking in Montana. The EQC decided that while water banking works in some states, Montana has water marketing alternatives in place and there was no need to add more. The panel also found that Montana lacks the physical

structures needed for water banking in the state.³²

ADDITIONAL RESOURCES

Several publications that examine water marketing are available on the Water Policy Interim Committee's website (www.leg.mt.gov/water), including "Private Water Leasing: A Montana Approach" produced by Trout Unlimited and "Saving our Streams: Harnessing Water Markets," published by the Political Economy Research Center. Also on the site is the "Analysis of Water Banking in Western States," a 2004 report from the Washington Department of Ecology and WestWater Research and an analysis overseen by the Montana Water Center at Montana State University-Bozeman.

³² *Ibid.*



INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED, ALL ROOM DESIGNATIONS ARE IN THE CAPITOL

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
June 2008						
1	2	3	4 LFC Budget & Approp. subcom. Rm. 102, 1 p.m. Petroleum tank release fund subcom., Room 422, 1 p.m. Joint LFC & RTIC subcom. conference call, 4:45 p.m.	5 LFC performance measurement work groups, 9 a.m. Legislative Finance Committee, Room 102, 1 p.m. State Fund/Workers' Comp subcommittee	6 Legislative Finance Committee, Room 102, 8 a.m. LAC auditor search subcommittee, Room 172, 9 a.m. Leg. Council, LFC, and LAC, chairs & vice chairs--tentative	7
8	9	10 Water Policy Committee Children, Families, Health, and Human Services Committee, Room 137, 10 a.m.	11 CFHHS, SJR 15 subcommittee, Rm 137, 8 a.m. Children, Families, Health, and Human Services Committee, Room 137, 10 a.m. Water Policy Committee	12 Postsecondary Education Policy and Budget Subcommittee, Room 102, 9 a.m. Education and Local Government Committee, K-12 subcom., Room 137	13 Education and Local Government Committee, Room 137	14
15	16	17	18	19 Fire Suppression Committee, Seeley Lake, Thompson Falls	20 Fire Suppression Committee, Libby Legislative Audit Committee, Room 152, 8:30 a.m.	21
22	23 State-Tribal Relations Committee, Pablo, MT	24 State-Tribal Relations Committee, Pablo, MT Legislative Council, Room 102, 10 a.m.	25	26 Law and Justice Committee	27 Law and Justice Committee	28
29	30 State Administration and Veterans' Affairs Committee, Room 102					

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
July 2008						
		1 State Administration and Veterans' Affairs Committee, Room 102	2	3	4	5
6	7	8	9	10 Revenue and Transportation Committee	11 Revenue and Transportation Committee	12
13	14 Environmental Quality Council, Room 102	15 Environmental Quality Council, Room 102	16	17 Economic Affairs Committee, Bozeman Energy and Tele- communications Committee	18 Economic Affairs Committee, Bozeman	19
20	21	22	23	24	25	26
27	28	29	30	31		

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